Filed 6/30/09 Marriage of Gustin CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of DALE IRVING GUSTIN and LAURIE DAWN GUSTIN.	
DALE IRVING GUSTIN, Appellant, v. LAURIE DAWN GUSTIN, Respondent.	A120251 (Contra Costa County Super. Ct. No. D01-05649)

Dale Irving Gustin (Dale) appeals the trial court's order denying his motion to vacate the judgment entered in his dissolution of marriage action against his former wife, Laurie Dawn Gustin (Laurie).[1] At the outset, we note that Dale has not complied with many fundamental rules of appellate procedure. In challenging a judgment, the appellant bears the burden of affirmatively demonstrating error by an adequate record. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) The appellant must present legal analysis and supporting authority for each point asserted, with appropriate citations to the record on appeal. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) The opening brief must "[s]tate the nature of the action, the relief sought in the trial court, and

[1] Laurie's former name, Laurie Dawn Silvius, was restored on July 12, 2007, upon entry of judgment in the dissolution case. For clarity and ease of reference, we refer to the parties by their first names. (See *In re Marriage of Green* (1992) 6 Cal.App.4th 584, 588, fn. 1.)

the judgment or order appealed from," "[s]tate that the judgment appealed from is final, or explain why the order appealed from is appealable," and "[p]rovide a summary of the significant facts limited to matters in the record." (Cal. Rules of Court, rule 8.204(a)(2)(A), (B), (C).) In addition, the appellant must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority . . . ." (*Id.*, rule 8.204(a)(1)(B); see also *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.) These are not mere technical requirements, but important rules of appellate procedure "designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass." (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.)

In addition to lacking a statement of appealability, Dale's opening brief lacks appropriate headings and offers unclear arguments. He has listed seven questions under a heading entitled "Issues Before This Court," but several of them appear to be duplicative and others are unintelligible. For example, number four among these questions is, "Did the illegal denial of the Appellant's request to Strike improper pleadings used by the Superior Courts for the sole purpose of allowing the Superior Court to make rulings in favor of the Respondent including the Contra County Court's (*sic*) refusal to dismiss the case for lack of Jurisdiction and to deny affirmative Motions brought by the Appellant deny the Appellant a fair and impartial Trial or even pretrial Motions on the issues of Jurisdiction?" Moreover, although the appellate record is voluminous (the register of actions alone is 56 pages, as judgment was not entered until over six years after the petition of dissolution was filed), it consists primarily and almost exclusively of Dale's moving papers. Notably, only a few of Laurie's oppositions to Dale's numerous motions, and almost none of the trial court's orders, including its judgment of dissolution that Dale challenges on appeal, have been included in the clerk's transcript. A majority of the "facts" in the "Statement of the Facts" section are set forth without citation to the record.

These deficiencies make it difficult for this court to determine the exact issues Dale seeks to raise on appeal. To the extent we have been able to discern any cognizable contentions, however, we glean they are: (1) the trial court lacked "jurisdiction"; (2) the trial court's application of Contra Costa County's "Local Rule 12" denied him his right to a fair trial; and (3) the trial judge should have recused himself "due to bias and prejudice." We reject the contentions, deem any other arguments waived, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Laurie filed a petition for dissolution in Contra Costa County on November 7, 2001. She listed her address as being in San Ramon, California, and declared she had been a resident of California for at least six months and a resident of Contra Costa County for at least three months immediately preceding the filing of the petition. Dale filed a response in Contra Costa County on June 28, 2002, and filed an order to show cause on July 18, 2002, requesting spousal support and attorney's fees and costs, among other things.

For the next few years, the parties engaged in litigation in Contra Costa County regarding various issues including spousal support, property division, and the validity of a postnuptial agreement. The remaining issues were scheduled to be tried before Judge Judith Craddick on July 19, 2005. On that day, shortly after the parties and their attorneys stated their appearances, Dale stated, "I'm not sure this Court has jurisdiction to hear the dissolution of marriage because Laurie Gustin has never been a resident of this county. She's had a work address here, and her home address and all her mailing is always in San Luis Obispo County, and the only other mailing address she had was in Contra Costa County, but that was a work address when she was employed." Laurie's attorney stated: "Your Honor, at the time . . . the petition for dissolution was filed, Miss Gustin resided in . . . San Ramon. She was working at SBC in San Ramon. This Court has jurisdiction and has had jurisdiction. [¶] Dale Gustin filed a response in the

[2] Because the record is incomplete, we refer to entries in the register of actions for much of the case history.

case in this county and didn't raise it at that time. This is the first time this argument has come up." When asked by the court why he was raising the issue at this time, Dale responded that he thought his attorney was going to file a motion to "transfer jurisdiction."[3] Laurie's attorney suggested Laurie could testify she was a resident of Contra Costa County for three months before she filed the petition for dissolution.

After hearing Laurie's testimony, Judge Craddick found that Laurie was not a legal "resident" of Contra Costa County at the time she filed the petition but was living there only temporarily. She continued: "However, that said, under CCP 396, the superior court has jurisdiction to hear divorces and property issues, so it is not a jurisdictional issue, but it is a venue issue. Jurisdiction cannot be waived; however, venue, which refers to the proper county for the trial, can be waived. [¶] If venue is challenged under CCP 396b, there is a time limit for doing so, and that time limit is at the time the defendant answers, demurs, [or] moves to strike. Or you can file a change of venue without doing that, and if it's denied, then the court has to give you time to file a response so that you're not in default. [¶] 396b(c), however, says that the court in a proceeding for dissolution may for good cause shown and on motion even after the time initially allowed in a civil case may grant a motion for change of venue. Of course, the motion for change of venue filed later in the proceeding does not negate, void, or otherwise set aside any judgments or orders previously made. [¶] . . . [¶] . . . I think that unless you have good cause for not making this motion sooner, you've waived it." The trial court again asked Dale why he had waited so long to request a change in venue. Dale responded, "it wasn't until now that the case was ready for trial." The trial court stated: "This is what I'm going to do. I am going to allow you to file your motion for change of venue. That will give [Laurie's attorney] an opportunity to oppose it in writing and do some research that's necessary . . . ." Judge Craddick issued a briefing schedule

[3] Dale is an attorney "in the small town of Paso Robles." He is a solo practitioner and 30 to 40 percent of his cases are family law cases. He was represented by counsel or co-counsel at various times during the course of these proceedings.

and the hearing on the motion to change venue was scheduled for August 24, 2005. She scheduled a "backup trial date" for September 12, 2005.

Dale filed a motion to change venue on August 3, 2005. On August 24, 2005, his motion was "dropped from calendar . . . with prejudice for failure to appear." On September 9, 2005, Dale filed an "Objection to ruling and to reopen" and requested that the court vacate its August 24, 2005, order. He explained he was unable to appear in court on August 24, 2005, because he was " 'triple set' in three Courts in San Luis Obispo County" that day. He complained that the Contra Costa County Superior Court, which had ruled against him on various issues, including denying his request for spousal support, "has demonstrated a bias and prejudice against me in this case." He stated: "It is obvious that I will not get a fair and impartial trial in the County of Contra Costa and respectfully request that this Court grant a Change of Venue to San Luis Obispo County, which is the proper County having Jurisdiction pursuant to the Family Law Code."

On September 12, 2005, the day set for trial, Dale filed a document entitled "request to have this case transferred to the county having proper jurisdiction due to bias upon the part of the judiciary assigned to this case pursuant to California Code of Civil Procedure section 170.1." He declared in part: "I have been discriminated against in this case throughout the proceedings including the most recent wherein Judge Craddick took my motion off calendar when I could not appear due to several appearances in San Luis Obispo County Courts that involved priority issues . . . ." At trial on September 12, 2005, Judge Craddick allowed Dale to argue his motion to change venue, then denied the motion.[4] The trial commenced. After Judge Craddick heard some testimony, she scheduled a further trial date on the remaining issues for April 24, 2006.

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[4] The transcript of the September 12, 2005, trial is not part of the record but the minute order from that date states in part: "Rsp [Respondent] argues change of venue motion. [¶] . . . [¶] [Laurie's attorney] argues her opposition to Rsp's change of venue motion. The court orders Rsp's change of venue motion denied." According to the minute order, Dale then served Judge Craddick with a peremptory challenge as to cause, which Judge Craddick also denied.

On April 24, 2006, Dale again argued his motion to change venue. Judge Craddick took a recess to review the transcripts from July 19, 2005, and September 12, 2005 (the previously scheduled trial dates). The register of actions from April 24, 2006, states in part: "The court returns after reading the transcripts and decides she must recuse herself on the basis of Mr. Gustin's conduct in this case. The court feels it cannot hear the completion of this trial fairly. The court declares a mistrial in this matter. Mr. Gustin has frustrated this court[']s attempts to fairly try the matters before it."[5]

On October 4, 2006, Dale filed points and authorities arguing that "the case must be transferred to the county having jurisdiction per the [July 19, 2005] ruling of Judge Craddick." On October 10, 2006, he filed a motion to strike the petition and response on the ground the court lacked "Jurisdiction for the filing of [the petition for dissolution]." The case was reassigned to Judge Barry Baskin on November 20, 2006. On December 1, 2006, the motion to strike the petition and response was dismissed with prejudice after Dale failed to appear at a hearing on the motion.

On March 13, 2007, Dale filed a request to disqualify Judge Baskin on the basis of bias and prejudice "and to have this case transferred to the county having proper jurisdiction." On April 3, 2007, Judge Baskin issued an order striking respondent's

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[5] Although the transcript from the April 24, 2006, trial is not in the record, Dale cited from the transcript in a pleading he later filed, and quoted Judge Craddick as stating: "Mr. Gustin, I frankly am at the point where I don't think I can give you a fair trial. I am so disgusted with your conduct. [¶] As you can tell, I am – I have tried very hard throughout this case to be fair to you. I'm at the point now I don't think I can be fair, and I need to recuse myself. [¶] I cannot give this man a fair trial. I cannot. I cannot view any evidence that he presents and trust it." According to Laurie, Judge Craddick additionally stated: "You're a lawyer, and you come in here, you present yourself as being a family law attorney, yet you don't know the law. You don't follow the law. You don't do anything that you need to do to get the relief that you're seeking. . . . Because of your conduct, I ought to sanction you as much as I possibly could, but I don't think . . . I could even be fair . . . doing that. I cannot give you a fair trial. I have decided, reading this transcript, reading the other one, and reading the file again . . . I should report you to the State Bar for your conduct in this case, and I think I will do that, but I am going to have to recuse myself. . . ." Because the transcript has not been provided to us, it is not clear whether the above representations by the parties completely or accurately reflect the statements Judge Craddick made.

statements of disqualification and his disqualification motion on the grounds that (1) the declarations of Dale and his attorney are "conclusory and based primarily on dissatisfaction with various decisions and rulings made by other judges in this case," (2) the motion was never personally served; and (3) the motion was not pursued at the "earliest practicable opportunity" as required by statute. The order also stated: "The respondent alleges some improper ex parte communication by petitioner[']s counsel with BASKIN's clerk. The allegation is frivolous: Communication with the clerk by . . . counsel . . . is required to contest a tentative ruling and the respondent conceded the need to correct the tentative ruling at the hearing . . . [¶] . . . [¶] Respondent's perception there is something improper about the judge changing a tentative ruling is nothing more than dissatisfaction with the ruling and that objection was not made at the hearing. Thus the argument about the requisite contact of petitioner[']s counsel to dispute tentative rulings and to appear at the hearing reveal a significant lack of knowledge of law and motion practice, of tentative rulings in general and local rule 12.7H . . . ."

On May 16, 2007, Dale filed a document entitled "Objection to striking of challenge and request to have this case transferred to the county having proper jurisdiction for any further proceedings . . . ." On May 18, 2007, he filed an order to show cause and affidavit for contempt, alleging Laurie violated a spousal support order. The contempt hearing was scheduled for June 22, 2007, but was continued to August 13, 2007, because Dale was "unable to effectuate service on [Laurie]." The order to show cause was later dismissed for Dale's failure to appear at the continued hearing.

A trial on all remaining issues took place before Judge Baskin on July 12, 2007. Preliminarily, the trial court denied Dale's request for a continuance. It then noted it had received "all of [Laurie's] paperwork including the objections [she] filed in a timely fashion" but had not received "anything from the other side." Dale explained that he and his co-counsel had been working on an appeal "that's been very, very time consuming." Dale objected to the use of Laurie's declaration in lieu of testimony on the ground that she was available to testify and he wished to cross-examine her. The court responded, "Sure," and stated it was going to proceed with trial "the old-fashioned way," in which

Dale would be entitled to cross-examine Laurie and also have her testify on direct examination.

As Laurie's attorney was about to call her first witness to the stand, Dale stated there were issues other than the ones set forth in the court's order that he believed needed to be tried. Noting, "we're in trial now . . . and we're going into the evidentiary phase," the court instructed Dale to make appropriate objections during trial and in closing if he believed the court was not addressing issues he believed needed to be addressed. The court later explained that it had issued an order on December 8, 2006, instructing the parties to serve and file a statement of all issues pending before the court by March 2, 2007, and to file a response setting forth objections to the other party's statement of pending issues by March 9, 2007. The court stated that "the obvious purpose of making that . . . order was to better understand for my benefit and for both sides' benefit exactly what issues could possibly be pending having been tried so many times before the court." The court stated that on February 5, 2007, Laurie filed a statement of issues to be tried and a statement of issues already determined by the court. The court stated that Laurie's statements were "not objected to nor did the Respondent file any issues to be tried himself. Accordingly, the issues that I then ruled would be tried today are the issues listed one through seven on the Petitioner's list of issues pending with the court . . . ." Dale stated, "Well, I'm going to object to – to proceeding on the lack of jurisdiction to proceed and also because of several things that have happened in this thing that have created the bias, starting with Mr. LeSage [co-counsel] becoming associate of counsel on February 10, 2006. And even on the contempt citation filed May 18, the clerks are still refusing to recognize him as attorney of record. And then the . . . ." The court instructed Mr. LeSage to file a Substitution of Counsel and stated that in any event, it was recognizing him as co-counsel for purposes of the trial. The court stated it was not going to deal with "irrelevant things right now," to which Dale responded, "Yes, but I think that I do need to put on the record that I'm objecting to that. The court does not have jurisdiction to conduct a trial."

After the parties testified, Dale stated that the court's refusal to allow him to present evidence regarding certain issues he wished to be tried, including jurisdiction, "has created such a bias and prejudice in this case that it is impossible to protect my rights to a fair and impartial trial . . . ." After confirming the parties had no additional evidence to present, and before hearing closing arguments, the court asked the parties whether they were ready to terminate the marital status. Laurie's attorney responded, "[y]es," and Dale responded, "I don't believe this court has any jurisdiction to issue new judgments." The court proceeded to terminate the marital status and granted Laurie's request to have her former name restored. The court then indicated it was ready to hear closing arguments. As Laurie's attorney began to speak, Dale began walking out of the courtroom. The court asked, "Mr. Gustin, why are you standing and walking out?" Dale responded, "Because I'm leaving. I'm not going to submit to this court's jurisdiction any further." Dale instructed his co-counsel to leave. Co-counsel stated, "I'm following his instructions, so I would simply submit it on the pleadings, your Honor." After Dale and his co-counsel left the courtroom, the court issued its findings and orders and instructed Laurie's attorney to prepare and submit a final judgment of dissolution.

A final judgment of dissolution and the notice of entry of judgment of dissolution were filed on July 13, 2007. On July 17, 2007, Dale filed a document entitled "Second supplement declaration to notice of motion to reconsider and argument in support of request to vacate ruling to set matter for trial and to reinstate ruling to dismiss case for lack of jurisdiction and to vacate order on report of Commissioner Berkow due to lack of jurisdiction to make orders on issues to be determined at trial and in support of striking of petition and response and a request for sanctions against [Laurie's attorney] for her conduct during these proceedings." On July 18, 2007, he filed a different document with the same caption ("Second supplement declaration to notice of motion to reconsider . . . .") and also filed a document entitled "Objection to recent documents which do not appear to have been served either personally or by mail and/or are not properly verified and request that they be stricken." On August 3, 2007, he filed a motion to "vacate judgment and dismiss case." He argued, among other things, that the court lacked

jurisdiction to grant a divorce decree and that he was denied a fair trial. On August 3, 2007, he also filed a motion for "new trial, mistrial and/or to re-open trial." On August 16, 2007, he filed documents entitled "Points and authorities in support of motion to vacate judgment," "Declaration in support of motion to vacate judgment," "Declaration in support of a new trial, a mistrial, or to reopen the trial," and "Points and authorities in support of motion for a new trial, mistrial and/or to reopen trial."

Laurie filed an opposition to the motions on September 10, 2007, and the motions were denied on September 14, 2007. In denying the motions, the court stated in part that no new facts or law had been presented and that by walking out of the trial before making a closing argument, Dale waived his right to raise arguments he did not raise in his closing argument. The court also stated: "Respondent's conduct, in bringing repeated motions which are frivolous and by filing papers which have no purpose, is becoming a concern to this court. Respondent should be on notice to confine motions and filings to appropriate and necessary ones."

On September 18, 2007, Dale filed a document entitled "Amended points and authorities in support of motion for a mistrial, a new trial, and/or to reopen trial." On September 19, 2007, he filed a document entitled "Reply declaration of Dale I. Gustin points and authorities." On October 12, 2007, he filed a motion to reconsider and a document entitled "Points and authorities in support of motion to reconsider, to dismiss case, and to set aside and vacate judgment." Laurie filed an opposition on October 26, 2007.

Dale filed a notice of appeal on December 5, 2007. A hearing on Dale's motion to reconsider was held on December 6, 2007, and the court issued the following ruling: "Respondent's motion is denied for the reasons stated by Petitioner. Respondent faxed an untimely reply on 12/3/07 without a proof of service. Nothing in the reply is new, except for Respondent's frivolous argument that Local Rule 12 was used at trial. It was not. It was specifically abandoned and only live testimony was considered . . . . Pursuant to Fam. Code 271, the court grants the sanctions as requested in the sum of $2,250 (being 9 hours at $250 per hour). The court considered the financial positions of both parties

and there is no hardship in granting this. Respondent is admonished not to file frivolous motions as Respondent's conduct is approaching the level of "vexatious" acts as that te[r]m is defined in CCP 391(b)(3). [¶] The court again notes that despite previous requests, Mr. LeSage [Dale's co-counsel] has not yet filed a counsel of record document."

DISCUSSION

Jurisdiction

Family Code section 2320 provides, "A judgment of dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition." Dale contends the Contra Costa Superior Court lacked jurisdiction because Laurie was not a "resident" of Contra Costa County for three months before filing the petition for dissolution in that county. We conclude Dale has waived the issue by failing to object in a timely manner.

Dale has dedicated several pages of his opening brief to issues relating to personal and subject matter jurisdiction, and his argument appears to be based on the premise that a claim of lack of jurisdiction can never be waived. However, the residence requirement of Family Code section 2320 is not jurisdictional in the fundamental sense; rather, it merely limits the manner in which the court may exercise its jurisdiction. (See *In re Marriage of Straeck* (1984) 156 Cal.App.3d 617, 621-622 (*Straeck*) [all superior courts in California have subject matter jurisdiction over family law matters and all California residents are subject to personal jurisdiction of the California courts]; Fam. Code, § 200; Code Civ. Proc., § 410.10.) "Jurisdiction relates to the power of the court to act, and a court with that power may render a valid judgment even though it is not the court of the proper county for trial." (3 Witkin, Cal. Procedure (5th ed. 2008), § 779, p. 1016; see also *Brock v. Superior Court* (1947) 29 Cal.2d 629, 631-632.) Thus, a judgment entered without compliance with the residence requirement is not void. (See *DeYoung v. DeYoung* (1946) 27 Cal.2d 521, 526; *Handy v. Superior Court* (1960) 185 Cal.App.2d 21, 23.)

In marital dissolution proceedings, a defense that residence requirements have not been met is waived unless it is raised by a timely motion to quash the proceeding. (Cal. Rules of Court, rule 5.121(a)(3) ["Within the time permitted to file a response, the respondent may move to quash the proceeding, in whole or in part, for any of the following reasons: [¶] (3) Failure to meet the residence requirement of Family Code section 2320"], (d) ["The parties are deemed to have waived the grounds set forth in (a) if they do not file a motion to quash within the time frame set forth"]; *In re Marriage of Tucker* (1991) 226 Cal.App.3d 1249, 1256.)

Here, Dale did not file a motion to quash based on Laurie's failure to meet the residence requirement. Instead, he filed a response and subsequently requested various orders from the Contra Costa County Superior Court. In fact, he acknowledges on appeal that he *chose* to proceed in Contra Costa County in order to obtain certain orders. He states: "During the initial proceedings, Appellant did not initially challenge Jurisdiction as he was seeking Temporary Orders to try to save the family residence from foreclosure, but also to obtain temporary Orders for legal fees and Spousal Support and was required to file those Motions immediately upon filing his Response . . . . But the Respondent has vigorously opposed all of those attempts . . . ." When asked why it took him so long to raise the issue, he stated he "understood" his attorney was going to file a motion to "transfer jurisdiction." Dale has waived any defense based on lack of residence.[6]

Contra Costa County Local Rule 12

Dale contends the trial court denied him his right to a fair trial in applying Contra Costa County Superior Court local rule, "Rule 12,"[7] to the trial. We reject the contention.

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[6] As noted, Dale filed numerous motions to change venue. Some of the arguments he made below can be interpreted to mean that he was challenging venue on the additional grounds that the judges in Contra Costa County were biased against him, or that the convenience of witnesses required a transfer of venue. On appeal, however, he has not raised any coherent arguments relating to whether the case should have been transferred due to bias or convenience of witnesses. We therefore need not, and will not, address these additional grounds.

[7] Rule 12 refers to Contra Costa County's local rules relating to family law proceedings. It consists of over 15 pages and covers a variety of topics including temporary restraining

Dale relies on *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 (*Elkins*), in which the Supreme Court held that a Contra Costa County Superior Court local rule (former rule 12.5), which required parties in marital dissolution trials to present their cases by means of written declarations, was invalid because it conflicted with the hearsay rule, subjected family law litigants to second-class status, and deprived them of access to justice. (*Id.* at pp. 1359-1360, 1368.) *Elkins* is inapposite because here, the trial court *sustained* Dale's objection to the use of Laurie's written declaration in lieu of testimony, and proceeded with trial "the old-fashioned way," in which Dale was entitled to cross-examine Laurie and to have her testify on direct examination. The record shows that both parties testified and were cross-examined and that written declarations were not used in lieu of testimony, i.e., the trial court did not apply the local rule that was held invalid in *Elkins*.[8]

Dale makes several other arguments relating to Rule 12 that are unintelligible or not supported by any citation to relevant authority. For example, he asks, "did the application of Rule 12 by the Contra Costa Superior Court Family Division to deprive the Appellant of his right to present his issues, which resulted in only the issues put forth by the Respondent to be allowed during Trial?" He argues: "Judge Baskin ruled that only the issues of the Respondent could be present (*sic*) at Trial which was a part of implementation of his Rule 12 in the Contra Costa County Family Law Courts. **That Local Rule 12 has now been held to be a violation of Due Process Requirements of the Civil Code, the Civil Code of Procedure, and the Family Law Code, by the *Elkins* case."** (Emphasis in original.) It appears his argument is that the trial court used "Local Rule 12" to improperly limit the issues to be tried.

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orders, calendaring, tentative rulings, case management conferences, mandatory settlement conferences, trial setting, experts, and rules of confidentiality.

[8] Dale has asked this court to "[a]ugment the record" to include the amicus curiae briefs that were filed by various organizations in the *Elkins* case. He did not file a proper request, nor has he shown that *Elkins* is relevant to any of the issues in this appeal. We therefore deny his request.

Preliminarily, we note that *Elkins* held only that former section 12.5 of the local rules relating to trial by written declarations (as opposed to the entire local rule 12 relating to family law proceedings) was invalid. Thus, *Elkins* does not support his argument that the trial court erred in applying other, unspecified provisions of "Rule 12" to limit the issues to be tried. In any event, the record amply supports the trial court's decision to limit the issues to be tried. As noted, on December 8, 2006, the court ordered the parties to file statements setting forth all remaining issues that needed to be set for trial. The case had been pending for over five years at that point, and the trial court stated it wished to "better understand for my benefit and for both sides' benefit exactly what issues could possibly be pending having been tried so many times before the court." Laurie filed her statement of remaining issues on February 5, 2007. Dale did not file a statement, nor did he object to Laurie's representation of what the remaining issues were. The trial court did not err in refusing to allow Dale to present new issues for the first time on the day of trial.

Dale has failed to articulate how the trial court's application of "Rule 12" violated his right to a fair trial.

Judicial bias

Dale contends the trial judge, Barry Baskin, should have recused himself because he was biased against Dale. He presents most of his arguments in the form of questions and offers no relevant legal authority in support of his contention. He asks, "Did this [Judge Baskin's decision to "deprive the Appellant of his right to present his issues"] result in an obvious bias and evidence of the Trial Court's wrath coming down upon the Appellant for his refusal to remain for the balance of Trial when Appellant was being denied his Constitutional rights to a Fair Trial . . . ?" He asks, "Did the use of perjured testimony by Respondent, Laurie Gustin, the Courts of Contra Costa County displaying extreme bias and prejudice against the Appellant, (an "out of County litigant and Attorney") and in favor of the Respondent, Laurie Gustin, (represented by a local County Attorney) prevent the Appellant from obtaining a fair and impartial adjudication of the issues during Trial?" He asks, "Should Judge Barry Baskin have recused himself due to

bias and prejudice on his part against the Appellant and in favor of the Respondent by making rulings in the alleged illegal Judgment that were beyond the scope of any pleadings or request by any party and designed to over-rule valid Orders made by a prior Superior Court Judge, Judge Craddick?" Finally, he asks, "Did Judge Barry Baskin display an intent to punish the Appellant for Challenging said Trial Judge, Barry Baskin, on the issues of Jurisdiction, bias and prejudice?" It appears the argument is that Judge Baskin should have recused himself because his rulings show he was biased against Dale.

A trial court's "numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias, especially when they are subject to review." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1112, citing *Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 795-796.) If Dale believed Judge Baskin was biased against him, his remedy would have been to file a peremptory challenge or a challenge for cause. The record shows Dale filed a peremptory challenge against Judge Baskin on March 13, 2007, and the challenge was stricken on April 3, 2007. Thereafter, a petition for writ of mandate was the exclusive means by which he could seek review of his unsuccessful peremptory challenge. (Code Civ. Proc., § 170.3, subd. (d) [an order denying a peremptory challenge is not an appealable order and may be reviewed only by way of a petition for writ of mandate]; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2008) ¶ 2:259.3, p. 2-121 [same].) Dale did not file a petition for writ of mandate. Accordingly, his contention regarding judicial bias is not properly presented in this appeal.[9]

[9] We note that in any event, Dale has not met his burden of establishing facts supporting his claim of bias. In evaluating whether a judge was biased or prejudiced against a party, we ask whether the reasonable person aware of all of the facts would entertain doubts concerning the judge's integrity, impartiality, and competence. (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 246.) "Bias and prejudice are never implied and must be established by clear averments." (*Shakin v. Board of Medical Examiners* (1967) 254 Cal.App.2d 102, 117.) We have not found anything in the record indicating Judge Baskin was biased or prejudiced against Dale.

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal. Respondent's request for monetary sanctions against Appellant for filing a frivolous appeal is denied for failure to comply with California Rules of Court, rule 8.276(b).

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.